WEST virginia legislature

2021 regular session

Committee Substitute

for

Senate Bill 466

By Senator Maynard

[Originating in the Committee on Government Organization; reported on March 5, 2021]

A BILL to amend and reenact §30-38-3, §30-38-4, §30-38-6, §30-38-11, and §30-38-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-38A-3, §30-38A-4, §30-38A-8, and §30-38A-10 of said code, all relating to real estate appraisal; clarifying requirement that classification and license or certification number be shown on documents; authorizing real estate appraisal licensing and certification board to hire certain persons; clarifying definition of “appraisal management company” for purposes of Appraisal Management Companies Registration Act; expanding list of individuals prohibited from owning registered appraisal management companies; requiring owners of more than 10 percent of appraisal management company to submit to background check; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. the real estate appraiser licensing and certification act.

**§30-38-3. Definitions.**

As used in this article, the following terms have the following meanings:

(a) “Appraisal” means an analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment.

(b) “Analysis assignment” means an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property.

(c) “Appraisal foundation” means the appraisal foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(d) “Appraisal report” means any communication, written or oral, of an appraisal. An appraisal report may be classified by the nature of the assignment as a “valuation report”, “analysis report”, or “review report”. For ~~the~~ purposes of this article, the testimony of an appraiser dealing with the appraiser’s analyses, conclusions, or opinions concerning identified real estate or identified real property is considered an oral appraisal report.

(e) “Board” means the real estate appraiser licensing and certification board established by the provisions of this article.

(f) “Certified appraisal report” means a written appraisal report that is certified by a state licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal report as “certified”, the real estate appraiser must indicate the type of licensure or certification he or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser, a state certified general real estate appraiser, or a state certified residential real estate appraiser~~,~~ represents to the public that the report meets the appraisal standards established by this article.

(g) “Certified real estate appraiser” means a person who holds a current, valid certification as a state certified residential real estate appraiser or a state certified general real estate appraiser issued to him or her under the provisions of this article.

(h) “Complex appraisal” means an appraisal that: (1) For nonresidential property, relies on all three approaches to value, being the cost approach, the income approach, and the sales comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2) for residential property, relies to any significant degree on at least two of the three approaches to value, with one approach being the sales comparison approach, ~~or does not have the characteristics of a noncomplex appraisal~~ or one in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(i) “Cost approach” means an approach to valuing real estate ~~which~~ that requires an appraiser to: (1) Develop an opinion of site value by an appropriate appraisal method or technique; (2) analyze comparable cost data as are available to estimate the cost new of the improvements if any; and (3) analyze comparable data as are available to estimate the difference between the cost new and the present worth of the improvements, also called accrued depreciation.

(j) “Income approach” means an approach to valuing real estate ~~which~~ that requires an appraiser to: (1) Analyze comparable rental data as are available to estimate the market rental of the property; (2) analyze comparable operating expense data as are available to estimate the operating expenses of the property; (3) analyze comparable data as are available to estimate rates of capitalization or rates of discount; and (4) base projections of future rent and expenses on reasonably clear and appropriate evidence.

(k) “Licensed real estate appraiser” means a person who holds a current, valid license as a state licensed residential real estate appraiser issued to him or her under the provisions of this article.

(l) “Noncomplex appraisal” means an appraisal for which: (1) There is an active market of essentially identical properties; (2) adequate data is available to the appraiser; (3) adjustments to comparable sales are not large in the aggregate, specifically not exceeding the trading range found in the market of essentially identical properties; and (4) for residential properties, the contract sales price falls within the market norm or median sales price for homes or lots within the same area.

(m) “Real estate” means an identified parcel or tract of land, including improvements, if any.

(n) “Real estate appraisal activity” means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(o) “Real estate appraiser” means a person who engages in real estate appraisal activity for a fee or other valuable consideration.

(p) “Real property interests” means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(q) “Review assignment” means an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(r) “Sales comparison approach” means an approach to valuing real estate ~~which~~ that requires an appraiser to analyze such comparable sales data as are available to indicate a value conclusion.

(s) “Valuation appraisal” means an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

§30-38-4. Classifications of licensure and certification; authority of appraisers; classification and license or certificate number required on all documents; corporations.

(a) The three classifications of real estate appraisers are state licensed residential real estate appraiser, state certified residential real estate appraiser, and state certified general real estate appraiser.

(b) A state licensed residential real estate appraiser is authorized to conduct appraisals of: (1) Complex residential real estate of one to four units having a value of less than $250,000; (2) noncomplex residential real estate of one to four units having a value of less than $1 million; and (3) nonresidential real estate having a value of less than $100,000.

(c) A state certified residential real estate appraiser is authorized to conduct appraisals of residential real estate of one to four units without regard to value or complexity, and nonresidential real estate when the value is less than $100,000.

(d) A state certified general real estate appraiser is authorized to conduct appraisals of all types of real estate.

(e) The board is authorized to establish by legislative rule other classifications of appraiser licensing not prohibited by applicable federal law.

(f) An appraiser shall indicate his or her classification and license or certificate number, as it appears on an issued license, on all appraisals, statements of qualification, contracts, and other instruments, including advertising media.

(g) A license or certificate may not be issued under the provisions of this article to a corporation, partnership, firm, or group.

(h) Nothing contained in this article prohibits any person licensed or certified under this article from engaging in the practice of real estate appraising as a professional corporation in accordance with the provisions of the Professional Service Corporation Act of this state.

§30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.

(a) The West Virginia real estate appraiser licensing and certification board, which consists of nine members appointed by the Governor with the advice and consent of the Senate, is continued.

(1) Each member shall be a resident of the State of West Virginia, except the appraisal management company representative is not required to be a resident of West Virginia.

(2) Four members shall be certified real estate appraisers having at least five years’ experience in appraisal as a principal line of work immediately preceding their appointment, and shall remain certified real estate appraisers throughout their terms.

(3) Two members shall have at least five years’ experience in real estate lending as employees of financial institutions.

(4) Two members may not be engaged in the practice of real estate appraisal, real estate brokerage or sales, or have any financial interest in these practices.

(5) One member shall be a representative from an appraisal management company registered under the provisions of §30-38A-1 *et seq*. of this code.

(6) No member of the board may concurrently be a member of the West Virginia Real Estate Commission.

(7) Not more than two appraiser members may be appointed from each congressional district.

(b) Members will be appointed for three-year terms, which are staggered in accordance with the initial appointments under prior enactment of this act.

(1) No member may serve for more than three consecutive terms.

(2) Before entering upon the performance of his or her duties, each member shall subscribe to the oath required by section five, article IV of the constitution of this state.

(3) The Governor shall, within 60 days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person who meets the requirements of this section for the unexpired term.

(4) Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office.

(c) The board shall elect a chairman.

(d) A majority of the members of the board constitutes a quorum.

(e) The board shall meet at least once in each calendar quarter on a date fixed by the board.

(1) The board may, upon its own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least 24 hours’ notice.

(2) No member may participate in a proceeding before the board to which a corporation, partnership, or unincorporated association is a party, and of which he or she is or was at any time in the preceding 12 months a director, officer, owner, partner, employee, member, or stockholder.

(3) A member may disqualify himself or herself from participation in a proceeding for any other cause the member considers sufficient.

(f) The appointed members will receive compensation and expense reimbursement in accordance with the provisions of §30-1-11 of this code.

(g) The board may employ staff as necessary to perform the functions of the board, to be paid out of the board fund created by the provisions of this article. Persons employed by any real estate agent, broker, appraiser, or lender, or by any partnership, corporation, association, or group engaged in any real estate business, may not be employed by the board. The board may hire a licensed or certified appraiser whose license status is inactive or who is not employed by any of the prohibited employers listed.

**§30-38-11. Applications for license or certification; renewals.**

(a) An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, in a form as the board may prescribe. In addition to any other information required, the applicant’s Social Security number will be recorded on the application.

(b) To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

(c) The payment of the appropriate fee must accompany all applications for original certification and renewal of certification and all applications to take an examination.

(d) At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she understands the types of misconduct, as set forth in this article, for which disciplinary proceedings may be initiated.

(e) To obtain a renewal of license or certification under this article, the holder of a current license or certification shall make application and pay the prescribed fee to the board no earlier than 120 days nor later than 30 days prior to the expiration date of the current license or certification. Each application for renewal must be accompanied by evidence in the form prescribed by the board that the applicant has completed the continuing education requirements for renewal specified in this article and the board’s rules.

(f) If the board determines that an applicant for renewal has failed to meet the requirements for renewal of license or certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant’s license or certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of license or certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal license or certificate shall be the day following the expiration of the certificate previously held by the applicant.

(g) If a state licensed or certified real estate appraiser under this article fails to renew his or her license or certification prior to its expiration or within any period of extension granted by the board pursuant to this article, the applicant may obtain a renewal of his or her license or certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee, within two years of the date that his or her license or certification expired.

(h) The board may deny the issuance or renewal of a license or certification for any reason enumerated in this article or in the rules of the board, or for any reason for which it may refuse an initial license or certification.

§30-38-17. Standards of professional appraisal practice.

Each real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation. The board may, after a public hearing or public comment period held in accordance with provisions of ~~article three, chapter twenty-nine-a of this code~~ §29A-3-1 *et seq*., adopt revised versions or make modifications of or additions to the uniform standards of professional appraisal practice.

Article 38A. Appraisal management companies registration act.

**§30-38A-3. Definitions.**

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “Applicant” means a person or firm making an application for registration under the provisions of this article.

(b) “Appraisal” means an analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment.

(c) “Appraisal Management Company” ~~means a person or firm that performs or provides appraisal management services, directly or indirectly, through the use of software products or online, or by any means of communication~~ means a person or firm that provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; provides such services in connection with valuing a consumer’s principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and within a given 12-month period oversees an appraiser panel of more than 15 state certified or state licensed appraisers in a state or 25 or more state certified or state licensed appraisers in two or more states.

(d) “Appraisal management services” means the business of managing the process of having an appraisal performed for compensation or pecuniary gain, including but not limited to any of the following actions:

(1) Conducting business directly or indirectly by telephone, electronically, mail, or in person;

(2) Providing related administrative and clerical duties;

(3) Recruiting, selecting, or retaining appraisers;

(4) Verifying qualifications of appraisers;

(5) Establishing and administering an appraiser panel;

(6) Receiving appraisal orders from clients;

(7) Contracting and negotiating fees with appraisers to perform appraisal services;

(8) Receiving appraisals from the appraiser and submitting completed appraisals to clients;

(9) Tracking and determining the status of orders for appraisals;

(10) Reviewing, verifying, and conducting quality control of a completed appraisal;

(11) Collecting fees from the clients; and

(12) Compensating appraisers for appraisal services rendered.

(e) “Appraisal review” means the act of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraiser assignment. The review does not include:

(1) An examination of an appraisal for grammatical, typographical, or other similar errors that do not make a substantive valuation change; or

(2) A general examination for compliance including regulatory ~~and/or~~ or client requirements as specified in the agreement process that do not communicate an opinion as to the valuation conclusion.

(f) “Appraisal services” means the practice of developing an opinion of the value of real estate in conformity with the minimum USPAP standards.

(g) “Appraiser” means a person licensed or certified, under the provisions of §30-38-1 *et seq*. of this code, to perform an appraisal.

(h) “Appraiser panel” means a group of appraisers that perform appraisals for an appraisal management company as independent contractors.

(i) “Automated valuation model (AVM)” means a mathematically based computer software program that produces an estimate of market value based on market analysis of location, market conditions, and real estate characteristics from information that was previously and separately collected.

(j) “Board” means the West Virginia Real Estate Appraiser Licensing and Certification Board established under the provisions of §30-38-1 *et seq*. of this code.

(k) “Client” means a person or firm that contracts or enters into an agreement with an appraisal management company for the performance of an appraisal.

(l) “Controlling person” means a person authorized by an appraisal management company to contract or enter into agreements with clients and independent appraisers for the performance of appraisal services and who has the power to manage the appraisal management company.

(m) “Firm” means a corporation, limited liability company, partnership, sole proprietorship, or any other business entity.

(n) “Registrant” means a person or firm holding a registration issued by the board under the provisions of this article.

(o) “Registration” means a registration issued by the board under the provisions of this article.

(p) “State” means the State of West Virginia.

(q) “USPAP” means the Uniform Standards of Professional Appraisal Practice.

§30-38A-4. Registration requirements.

(a) A person or firm performing or offering to perform appraisal management services or acting as an appraisal management company within this state shall be registered with the board ~~by July 1, 2014~~.

(b) A firm applying for a registration may not be owned, directly or indirectly by: ~~any employee or consultant who is~~

(1) A person who has had a license or certificate to act as an appraiser refused, denied, canceled, or revoked in this state or any other jurisdiction, unless the license or certificate was subsequently granted or reinstated; or

(2) A firm that employs a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in this state or any other jurisdiction, unless the license or certificate was subsequently granted or reinstated.

(c) The board may issue a registration to perform appraisal management services or act as an appraisal management company to a person or firm that:

(1) Makes written application to the board as set out in §30-38A-6 of this code;

(2) Submits certifications as set out in §30-38A-7 of this code;

(3) Submits national and state criminal background checks as set out in §30-38A-8 of this code;

(4) Posts a surety bond as set out in §30-38A-9 of this code;

(5) Pays the applicable fees as set out in §30-38A-10 of this code;

(6) Has a designated controlling person as set out in §30-38A-11 of this code; and

(7) Meets any other requirement set by the board.

(d) The registrations issued under the provisions of this article shall be renewed annually on July 1.

(e) Registrations not renewed in a timely manner are delinquent. To reinstate a delinquent registration, the registrant must pay a monthly penalty, as set by the board.

(f) A registration that has been delinquent for more than three months shall be considered expired and a new application for registration is required.

(g) The board shall issue a registration number to each appraisal management company registered in this state.

(h) The board shall keep a list of appraisal management company registered in this state and publish the list on its website.

§30-38A-8. Background check requirements.

(a) Upon application, the applicant, each owner who ~~is an employee of or consultant for the applicant~~ owns more than 10 percent, and the controlling person of the firm seeking registration shall submit to a state and national criminal history record check, as set forth in this section.

(1) This requirement is found not to be against public policy.

(2) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(3) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this subsection; and

(B) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(b) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(c) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(d) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

§30-38A-10. Fee requirements.

The fees assessed by the board, as established by legislative rule, shall include the annual fee for appraisal management companies and appraisal management companies that are subsidiaries of federally regulated financial institutions to be included in the national registry maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.